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REPORT
101-280

# APPLICATION OF EMPLOYER SANCTIONS TO LONGSHORE WORK

OCTOBER 13, 1989.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BROOKS, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H.R. 2138]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2138) to amend the Immigration and Nationality Act with respect to the application of employer sanctions to longshore work, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. APPLICATION OF EMPLOYER SANCTIONS TO LONGSHORE WORK.

(a) IN GENERAL.—Section 274A(h) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)) is amended by adding at the end the following new paragraph:

"(4) SPECIAL RULES RESPECTING LONGSHORE WORK.—

"(A) TREATMENT OF CERTAIN LONGSHORE WORK.—For purposes of this section, any person or other entity, including but not limited to ships agents, brokers, charterers, and procurers of labor, acting independently or on behalf of any other such person or entity, who brings into the United States (or coastal waters thereof) an individual who performs longshore work (as defined in subparagraph (D)), shall be considered to have hired such individual for employment in the United States within the meaning of subsection (a) as of the first date that the individual first performs such work.

"(B) PAPERWORK REQUIREMENT FOR LONGSHORE WORK.—In applying the requirements of paragraph (3) of subsection (b) (relating to retention of verification forms) to employment described in subparagraph (A), the person or entity shall designate, in writing to the Attorney General, a person or entity located at a port in the United States in the vicinity of the location of the longshore work involved who agrees to be responsible for the retention and making available for inspection of such forms under such paragraph.



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"(C) NO AUTHORIZATION MERELY THROUGH CLASSIFICATION AS ALIEN CREWMEN.—The mere classification of an alien as a nonimmigrant under section 101(a)(15)(D) (without the document or documents described in subsection (b)(1)(E)(i) with respect to the alien) shall not be considered to authorize, for purposes of this section and section 274B, the performance of longshore work by that alien.

"(D) LONGSHORE WORK DEFINED.—In this paragraph and subsection (b)(1), the term 'longshore work' includes activities relating or incident to the loading or unloading of cargo, including the operation of cargo-related equipment, whether or not integral to the vessel, and the securing of the vessel, in the United States or the coastal waters thereof; except that, for purposes of subsection (b)(1)(E)(ii), such term includes such activities with respect to vessels in (or in the coastal waters of) the reciprocal foreign state.".

(b) EMPLOYMENT VERIFICATION SYSTEM.—Section 274A(b)(1) of such Act (8 U.S.C. 1324a(b)(1)) is amended—

(1) in subparagraph (A)—

(A) in clause (i), by striking "or";

(B) in clause (ii), by striking the period and inserting ", or"; and

(C) by inserting after clause (ii) the following new clause:

"(iii) with respect to longshore work, the document or documents described in subparagraph (E)(i).".; and

(2) by adding at the end the following new subparagraph:

"(E) DOCUMENTS ESTABLISHING RECIPROCITY OF LONGSHORE WORK.—

"(i) IN GENERAL.—The document or documents described in this clause with respect to an individual's performance of longshore work are such a document or documents, in a form acceptable to the Attorney General, that establish that—

"(I) the individual is a national of a reciprocal foreign state (described in clause (ii)), and

"(II) the individual will perform such work in connection with a vessel that is documented and enrolled with a reciprocal foreign state.

"(ii) RECIPROCAL FOREIGN STATE DEFINED.—In clause (i), the term 'reciprocal foreign state' means a foreign state which the Attorney General has determined, in accordance with section 553 of title 5, United States Code—

"(I) has in effect immigration laws and regulations which authorize, on a nationwide basis, the performance of longshore work by United States nationals who are crewmembers of vessels which are documented and enrolled in the United States; and

"(II) in the territory or coastal waters of which United States nationals described in subclause (I) have performed such work during the six months preceding the application of clause (i) with respect to a national of the state or vessel documented and enrolled with the state.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to services performed on or after the date of the enactment of this Act.

## BACKGROUND

In 1986, Congress enacted the Immigration Reform and Control Act (IRCA), in large part to establish greater protection for the domestic livelihoods of U.S. citizens. Since then, however, the Committee has become aware that an important sector of American industry has not received this protection.

IRCA included explicit sanctions to deter the employment of aliens not authorized to work in the United States, and it created a detailed administrative mechanism to enforce these sanctions. IRCA did not except or distinguish the longshore industry in any way, because in the context of the desirability of protecting jobs for U.S. citizens, the longshore industry is indistinguishable from any other industry. However, the Immigration and Naturalization Service has interpreted a different provision of Federal immigration

law to authorize foreign crewmembers to perform limited longshore work at U.S. ports, even where U.S. longshoremen are qualified and available. Additional legislation is therefore necessary to protect this class of U.S. workers.

## PURPOSE OF LEGISLATION

The purposes of the bill are: to restrict the performance of traditional longshore work by nonimmigrant alien crewmen as defined at 8 U.S.C. § 1101(a)(15)(D), and by other nonresidents who have not been authorized to perform such work in the absence of certification by the Secretary of Labor under 8 U.S.C. 1182(a)(14); to require employers of foreign workmen whom they engage to perform longshore work to comply with the employment verification system under the Immigration Reform and Control Act of 1986 (P.L. 99-603), 8 U.S.C. 1324, et. seq. "IRCA"); and to subject employers to sanctions and penalties attached to the violation of those provisions.

The bill articulates the essence of "longshore work" as it is commonly understood in the domestic maritime industry. It delineates the persons and entities who are to be responsible for employing individuals engaged in such activities and makes them accountable for verifying their immigrant status and for examining documents required under IRCA and this bill, in order to determine that they meet the statutory and regulatory requirements for employment in the United States, including coastal waters. It clarifies the status of alien crewmen under section 101(a)(15)(D) (8 U.S.C. § 1101(a)(15)(D)), by explicitly providing that an alien crewman serving aboard a vessel, irrespective of whether it is located dockside or in coastal waters, is no different from other nonimmigrant aliens who are subject to the foregoing provisions and prohibitions with respect to the performance of longshore work. However, an exception is provided for an individual crewman who can demonstrate that he is a national of—and that the vessel involved is registered with—a foreign country whose own immigration laws and regulations authorize such work to be performed within its jurisdiction by United States crewmen aboard U.S.-registered vessels. The bill subjects employers who fail to abide by its terms to the same penalties under IRCA as are incurred by those who employ unauthorized workers in all other U.S. industries.

## HISTORY OF LEGISLATION

The Chairman of the Committee, Representative Jack Brooks, introduced H.R. 2138 on April 27, 1989, to amend the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) with respect to the application of employer sanctions to longshore work. The Subcommittee on Immigration, Refugees and International Law, chaired by Representative Bruce Morrison, conducted a hearing on the bill as originally proposed on June 14, 1989. The Subcommittee received testimony from representatives of the Immigration and Naturalization Service, the International Longshoremen's Association, AFL-CIO, and the International Longshoremen's and Warehousemen's Union.

The Subcommittee considered the bill on July 20, 1989, approved two amendments, and favorably reported it to the full Committee. The Committee ordered H.R. 2138, as amended, favorably reported to the House by a unanimous record vote on July 28, 1989.

## NEED FOR LEGISLATION

The U.S. longshore industry is located at every port facility in the United States where maritime cargo enters or leaves the United States. It performs an age-old and vital function for every other industry that engages in or depends upon the transportation of products or commodities: the loading and off-loading of maritime cargo aboard ship, along with some ancillary services related to this function. While the specific features of the industry vary widely in technology, scale, organization, and ownership, it has a distinct and universally recognized identity in the U.S. economy.

As in other countries, the industry orginated from the need for specialized service in the loading, securing, and off-loading of ships' cargo. From the earliest times, the function of navigating and maintaining a vessel has been distinct from the longshore function, because separate skills, workers, management, and equipment were all required for each. Accordingly, in the United States, as in all maritime countries, stevedore employers and their longshore employees have performed all work related to cargo-loading aboard, alongside, and in recent years even a considerable distance from, ships that enter and leave port facilities. Ships' crewmembers, on the other hand, are universally recognized as responsible for the movement and maintenance of the vessel itself, and its equipment and appurtenances.

The legislation seeks to rectify the Immigration and Naturalization Service's (INS's) understanding and interpretation of the status of a foreign seaman as a "nonimmigrant alien" under the definition of 8 U.S.C. 1101(a)(15)(D). An alien crewman is defined in the Act as a foreign seaman who is "serving in good faith as such in any capacity required for normal operation and service on board a vessel * * * [and who intends to land temporarily and solely in pursuit of his calling as a crewman. * * *" INS has construed this provision to permit foreign seamen to operate ship's gear which may be considered to be "an integral part of a vessel," and to engage in cargo-handling operations, such as the loading and unloading of lumber, scrap iron, etc., while a vessel is at anchor in coastal waters in U.S. ports.

Incidents involving foreign crewmen assigned to these tasks have reduced American residents' job opportunities. Moreover, litigation was initiated by union representatives to compel the INS to render an interpretation consistent with 8 U.S.C. 1182(a)(14), which excludes "aliens seeking to enter the United States for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that (A) there are not sufficient workers who are able, willing, qualified * * * and available" to do the work at issue, and that "the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed."

The purpose of Section 1182(a)(14) is to protect American workers form an influx of foreign skilled and unskilled laborers. See Senate Report No. 748, 89th Congress, 1st Session; House Report No. 1365, 82nd Congress, Second Session. Furthermore, in 1986, Congress enacted the Immigration Reform and Control Act, 8 U.S.C. 1324a (IRCA) for the specific purpose of protecting American jobs for American citizens. Unfortunately, U.S. longshoremen in American ports have been without the same protections against losses of their jobs to foreign labor as these same laws give to workers in other domestic industries. Because of the uneven applications of IRCA, U.S. longshoremen have been deprived of significant work opportunities, primarily in ports in the Pacific Northwest and on the Great Lakes. In the process, their employers, the stevedores, have lost significant amounts of business and revenue. The gravity of these effects threatens to persist and grow if these incidents are allowed to be repeated under the current application of IRCA. The INS interpretation of 8 U.S.C. 1101(a)(15)(D), issued in 1985, was based in part on the changing methods and technology of maritime cargo-moving, the increasing diversity and sophistication of the equipment, and the higher degree of specialized skills required to operate this equipment. Taking note of a new generation of shipboard equipment—in particular, specialized cranes—designed to facilitate the rapid loading and unloading of cargo, INS postulated that because this equipment constituted an integral part of the vessel, its operation fell within the ambit of "normal operation and service" carried out by ship's crewmembers. However, this rationale overlooked the fact that shipboard cargo-moving equipment is not a new phenomenon in the maritime industry, and that the most recent innovations in such equipment are no more integral to the navigation of a vessel than the earlier variations of equipment, e.g., rope slings, winches, and cable-hook systems.

It is true that higher levels of training and skill are required for the operation of some of the more sophisticated machinery that is steadily being introduced in marine cargo handling operations. The Committee recognizes that legitimate claims may be made that only crewmembers who have been specially pre-trained are capable of operating a particular piece of equipment efficiently and safely. But current law already provides for such exceptions by permitting employers to use foreign workers in the United States in situations where no American workers are qualified to perform a particular work function. Under 8 U.S.C. 1182(a)(14), as applied by the Department of Labor, any employer may make a showing and receive certification from the Department for this purpose. The requirement of specialized skills is consequently not a criterion for the classification of work performed in the United States as protected or unprotected for U.S. workers under immigration law.

In defending its interpretation of Section 1101(a)(15)(D), INS also noted that it had previously found shipboard dancers, part-time chefs, beauticians, barbers, and chemists to be "crewmen" within the meaning of the Section. But the critical characteristic shared by each of these workers is that their work is performed primarily, if not solely, when the vessel is at sea, not when it is in port. They consequently deprive no U.S. worker of work opportunities that are clearly within the province of protected U.S. employment.

In reviewing this issue, the Committee notes the analysis recently contributed by the U.S. Court of Appeals for the Ninth Circuit in *ILWU* v. *Meese,* No. 87-4083, August 29, 1989. The Court of Appeals stated that INS had earlier found that fish processing workers working aboard certain fishing vessels were not necessary for the normal operation of the vessel and that they could therefore not be classified as nonimmigrant alien crewmen. The Board of Immigration Appeals, the Court noted, made the same distinction in 1979, in Rajendra Prasad, 16 l. & N. Dec. 2696 (BIA 1979), and other Federal courts have also implicitly followed it. The Court of Appeals accordingly observed that "cargo loading is not an activity associated with traditional crewmen, but is ordinarily associated with longshore laborers," and that the foreign crane operators aboard ship in the case at hand "do not aid in the navigation * * * because their primary and substantial duties occur not while the ship is underway, but rather once they have entered United States territorial waters to load or unload the cargo."

The Court of Appeals went on to conclude that foreign crane operators were not included in Section 1101(a)(15)(D)'s definition of nonimmigrant alien crewmen. It observed that this interpretation of the definition "better promotes Congress' purpose of protecting American laborers from an influx of skilled and unskilled labor," while "(t)he INS's new policy, by looking solely to whether the activities are performed on board a vessel and by its expansive definition of crewmen, encourages such an influx of floating processing centers, restaurants and other operations."

The Committee finds the Ninth Circuit's analysis of current law and Congressional intent to be accurate, and believes it should be reconfirmed on a nationwide basis through legislation. The bill does not affect jurisdictional boundaries between different groups of U.S. workers. The Committee does not intend to change or disrupt any presently existing work jurisdictional patterns in the longshore or in any other industry. The Committee also intends that "longshore work," as defined in this bill, be refined as necessary in accordance with the prevailing practices in the port area involved or the collective bargaining agreement in effect at the time of the loading or unloading of cargo. The Committee believes that this is consistent with present immigration law.

## Analysis of Legislation

The Committee has determined that the verification procedures applicable to alien workers who come or are brought into the United States and those responsible for their employment are meant to apply in equal measure to individuals whose activities come within the commonly-accepted range of longshore work practiced in accordance with applicable collective bargaining agreements or as established through employer-employee work relationships. This bill therefore focuses upon this particular aspect of the maritime industry by characterizing what constitutes "longshore work" and thereby distinguishes it from the generally understood roles of alien crewmen in the "normal operation and service aboard a vessel." In the Committee's opinion, limiting the crisis of nonimmigrant alien crewmen to foreign merchant seamen whose

primary and substantive duties occur while their vessels are in the course of navigation, advances the purpose of protecting American jobs from an influx of skilled and unskilled labor.

H.R. 2138 extends the coverage of IRCA explicitly to longshore work and establishes a special filing requirement for the verification system of IRCA's Section 274A(b) as it applies to longshore work. Because vessels routinely enter and leave U.S. ports, often over very brief periods of time, and because foreign crewmembers frequently are directly employed not by shoreside employers but by foreign vessel owners, the existing requirement that every employer complete and retain a verification form showing the immigration status of every new employee does not in and of itself guarantee effective enforcement. The longshore industry is also exceedingly diverse in the business and employment roles played by its participants. For purposes of IRCA, the true "employer" who is responsible for the performance of longshore work by alien crewmen could be a vessel owner, master, charterer, agent, broker, procurer, or other entity. Moreover, the Committee is mindful of the need to minimize additional administrative burdens on INS.

H.R. 2138 provides for these considerations by requiring any person or entity who brings an individual into the United States or U.S. coastal waters to perform longshore work to designate in writing at that time a person or entity located near the site of the longshore work involved to return the verification forms and make them available for inspection. Since the verification form may cite any certification granted to the employer by the Department of Labor for the performance of work in the United States, this requirement is consistent with the right of any employer to seek such certification. By providing for the ongoing retention of the forms for subsequent inspection, the requirement will also allow the INS to inspect such forms on a highly selective basis. By subjecting employers of foreign crewmen who are employed to perform longshore work to the IRCA sanctions in this way, the Committee intends to provide both an effective enforcement mechanism and an effective deterrent to prospective violators.

The bill does not affect jurisdictional boundaries between different groups of U.S. workers. It is organizationally blind with reference to different categories of U.S. workers. It will not disrupt any presently existing work jurisdictional patterns in the longshore or in any other industry. It would reconfirm and clarify the range of U.S. longshoremen's work activities, while in no way diminishing or expanding upon the differing traditional areas of labor of longshoremen and merchant seamen in all maritime countries. Indeed, it would harmonize with practices in countries around the globe where these ships are registered and from which their crewmen originate.

There is a universally accepted observance, supported in some countries by legal or administrative restrictions, whereby alien crewmen in many instances are required to refrain, or are outright prohibited, from engaging in activities involving the loading and offloading of cargo, including with the use of ships' gear. Accordingly, the bill does provide for the possibility that another country may in the future permit American seamen on U.S. vessels to perform longshore work, as defined in the bill, within its own jurisdic-

tion. In such event, the U.S. government would be obliged to reciprocate out of comity and good will.

1. *The Scope of Longshore Work.*—The bill is designed to apply to longshore and related activities respecting cargo not only when the vessel is docked and in and about maritime terminals. It extends the Immigration Service's field of concern to activities actually or historically performed by American longshoremen aboard—or in connection with—vessels while lying offshore in coastal waters after entering into the United States' jurisdiction. Thus "longshore work" is defined to subsume activities which are specified in collective bargaining agreements or traditionally observed, relating or incident to the loading or unloading of cargo, including the operation of cargo related equipment, in the United States or the coastal waters thereof. In view of the numerous categories of longshore crafts and constantly expanding areas wherein American workers are engaged in longshore activities respecting cargo in bulk, breakbulk and containers, both onshore and offshore, any definition must of necessity be comprehensive, rather than precise and restrictive.

Consequently, the breadth of this definition and the specific reference to "cargo related equipment", such as ships' cranes, is intended to categorically encompass all such tasks as falling within the ambit of those (longshore) activities as and when performed—or attempted to be performed—by unauthorized aliens.

2. *Persons and Entities Covered.*—H.R. 2138 addresses all persons or entities who either directly or indirectly cause, or are responsible for, an unauthorized alien performing longshore work, as defined therein, within the United States or its coastal waters. This grouping comprises, among others, the owner, charterer, etc., of a vessel, and their agents, to include as well the vessel's master or mate in authority who may direct one or more alien crewmen to perform longshore work. The bill expressly provides that a crewmen's classification as an (undocumented) "nonimmigrant" under Section 101(a)(5)(D), (8 U.S.C. 1101(a)(15)(D)), "shall not be considered to authorize * * * the performance of longshore work by that alien."

Thus, the bill creates a presumption that utilization of an alien transported into the United States for whatever purpose to perform longshore work constitutes an employment relationship for such purpose, thereby triggering application of IRCA and acceptance of its requirements by the employer as of the first date that the individual first performs such work. This includes compliance with the verification procedures as defined in Section 274A(b)(1) of the Act (8 U.S.C. 1324A(b)(1)), as discussed hereinafter. Whatever pertains to use of the crewmen for such work would attach as well to use of any nonimmigrant non-crewman engaged by the employer or its agent for longshore-related work aboard a foreign vessel.

3. *Verification and Documentation.*—The bill permits employment of an alien attached to a vessel to perform longshore work, provided that he can produce documentation required of alien workers in other industries, as already required under 8 U.S.C. 1182(a)(14) of IRCA. This must include authorization for his employment in the United States, or documents establishing reciprocity. The latter consists of documentary proof, acceptable to the At-

torney General (or his designee), that the individual sought to be used for longshore operations is a national of—and that the vessel he is to work on is registered with—a country which permits American seamen and U.S. registered vessels to likewise handle cargo and where this has actually taken place within the preceding six months. Absent documents attesting to both indicia, the alien's employment in longshore tasks is prohibited and will subject the responsible or accountable person/entity to the sanction and penalties—monetary and injunctive, provided in subsection 101(e) of the Act (8 U.S.C. 1324(e)). This could include criminal penalties in those instances where a "pattern or practice" of such violations is found to exist, as contained in Section 101(f) of the Act (8 U.S.C. 1324(F)).

4. *Paperwork and Administration.*—This amendment to IRCA is not intended to burden INS with substantial additional caseloads or to have any such foreseeable effect. Rather, its existence and the dissemination of its contents and its implementation by appropriate regulations, directives and action by the Commissioner of INS will serve to alert maritime employers and their domestic agents that prior policies and interpretations no longer apply; that longshoremen are to be accorded equal protection in their work with all other American workers; and that they will be treated in the same manner as all other employers. These must be confined to their primary and substantive duties in the "normal operation and service" of their vessels as part of their permanent—as distinguished from the longshoremen's relatively brief—connections with their ships.

The bill further facilitates the administration of its provisions by requiring the potential employer to designate in writing its agent in the vicinty of a port where it intends to so employ an alien, who will retain the necessary verification documents and whom the Commissioner can contact in order to inspect them.

## Jurisdictional Concerns of Committee on Education and Labor

The Chairman of the Committee on Education and Labor, the Honorable Augustus F. Hawkins, has written to the Committee on the Judiciary regarding the former Committee's jurisdictional concerns relating to H.R. 2138. That letter follows:

Committee on Education and Labor,
U.S. House of Representatives,
*Washington, DC, October 13, 1989.*

Hon. Jack Brooks,
*Chairman, Committee on the Judiciary, Washington, DC.*

Dear Mr. Chairman: As Chairman of the Committee on Education and Labor, I wish to thank you for your kind consideration of our jurisdictional concerns relating to H.R. 2138, a bill to amend the Immigration and Nationality Act with regard to the imposition of employer sanctions under certain conditions to longshore work.

The Committee on Education and Labor first initiated the use of employer sanctions as a labor market provision in the original Farm Labor Contractor Registration Act and has since that time maintained its jurisdiction over employer sanctions provisions. This

Committee was granted jurisdiction over the Immigration Reform and Control Act of 1986 for consideration of the employer sanctions portion of that bill, and consistent therewith we would normally have requested sequential referral of H.R. 2138. Since the Committee on the Judiciary has accommodated our concerns and has acknowledged our basic jurisdictional claim we will not exercise our claim.

Again, Mr. Chairman, I very much appreciate your kind consideration in this matter and your willingness to so acknowledge our claim by inclusion of this letter in your committee report to accompany H.R. 2138.

With best wishes,

Sincerely yours,

AUGUSTUS F. HAWKINS,
*Chairman.*

## SECTION-BY-SECTION

Section 1(a) amends Section 274(a)(h) by adding:

(1) Paragraph 4(A): Special rules respecting longshore work, which deem the responsible parties to be "employers" if they procure aliens to perform longshore work.

(2) Paragraph 4(B): Requires designation of a local agent for retention and inspection of verification documentation.

(3) Paragraph 4(C): Declares that an alien crewman's status as a nonimmigrant does not per se entitle him to perform longshore work.

(4) Paragraph 4(D): Defines longshore work.

Section 1(b) amends section 274(A)(6)(1) by:

(1) Amending subparagraph (A) to (also) permit submission of documents on reciprocity to allow an alien crewman to handle cargo in U.S. ports.

(2) By describing the contents of such documents and the manner in which they are to be tendered.

Subsection 9(c) provides for the amendments to take effect following the date of enactment.

## OVERSIGHT STATEMENT

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee states that it has exercised, and will continue to exercise, close oversight with regard to the administration of the Immigration and Nationality Act in general and nonimmigrant visa laws in particular.

Clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives is inapplicable since no oversight findings and recommendations have been received from the Committee on Government Operations.

## INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that this bill will not have an inflationary effect on prices and costs in the operations of the national economy.

## ESTIMATE OF COST

Pursuant to clause 7, rule XIII of the Rules of the House of Representatives, the Committee concurs with the cost estimates set forth below by the Congressional Budget Office.

## BUDGETARY INFORMATION

Clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives is inapplicable because the instant legislation does not provide new budget authority. Pursuant to Clause 2(l)(3)(C) of rule XI, the following estimate was prepared by the Congressional Budget Office and submitted to the Committee:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, August 4, 1989.*

Hon. JACK BROOKS,
*Chairman, Committee on the Judiciary, U.S. House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2138, a bill to amend the Immigration and Nationality Act with respect to the application of employer sanctions to longshore work, as ordered reported by the House Committee on the Judiciary, July 28, 1989.

CBO estimates that enactment of this bill would result in costs to the federal government of about $1 million annually. The bill would amend the employer sanctions section of the Immigration and Nationality Act (8 U.S.C. 1234) to define longshore work performed on board a vessel as work performed in the United States, which would make longshore work subject to these sanctions. Under current law, longshore work performed from on board a vessel is not considered work performed in the United States and, therefore, not subject to employer sanctions. These sanctions impose penalties on employers for hiring undocumented aliens.

Based on information provided by the Immigration and Naturalization Service (INS), we expect that 10 to 15 additional inspectors would be sufficient to enforce the provisions of this bill. The estimate is based on an assumption that additional inspectors would be needed only at the ports where this issue is currently a problem—the ports in the Pacific Northwest. The annual costs resulting from the hiring of these inspectors would be around $1 million annually.

Enactment of this bill would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Michael Sieverts, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER,
*Director.*

## COMMITTEE RECOMMENDATION

After careful consideration of this legislation, the Committee is of the opinion that this bill should be enacted and accordingly recommends that H.R. 2138 do pass.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

## SECTION 274A OF THE IMMIGRATION AND NATIONALITY ACT

### UNLAWFUL EMPLOYMENT OF ALIENS

SEC. 274A. (a) * * *

(b) EMPLOYMENT VERIFICATION SYSTEM.—The requirements referred to in paragraphs (1)(B) and (3) of subsection (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the requirements specified in the following three paragraphs:

(1) ATTESTATION AFTER EXAMINATION OF DOCUMENTATION.—

(A) IN GENERAL.—The person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is not an unauthorized alien by examining—

(i) a document described in subparagraph (B), [or]

(ii) a document described in subparagraph (C) and a document described in subparagraph (D)[.] *, or*

*(iii) with respect to longshore work, the document or documents described in subparagraph (E)(i).*

A person or entity has complied with the requirement of this paragraph with respect to examination of a document if the document reasonably appears on its face to be genuine. If an individual provides a document or combination of documents that reasonably appears on its face to be genuine and that is sufficient to meet the requirements of the first sentence of this paragraph, nothing in this paragraph shall be construed as requiring the person or entity to solicit the production of any other document or as requiring the individual to produce such another document.

* * * * * * *

*(E) DOCUMENTS ESTABLISHING RECIPROCITY OF LONGSHORE WORK.—*

*(i) IN GENERAL.—The document or documents described in this clause with respect to an individual's performance of longshore work are such a document or documents, in a form acceptable to the Attorney General, that establish that—*

*(I) the individual is a national of a reciprocal foreign state (described in clause (ii)), and*

*(II) the individual will perform such work in connection with a vessel that is documented and enrolled with a reciprocal foreign state.*

*(ii) RECIPROCAL FOREIGN STATE DEFINED.—In clause (i), the term "reciprocal foreign state" means a foreign state which the Attorney General has determined, in accordance with section 553 of title 5, United States Code—*

*(I) has in effect immigration laws and regulations which authorize, on a nationwide basis, the performance of longshore work by United States nationals who are crewmembers of vessels which are documented and enrolled in the United States; and*

*(II) in the territory or coastal waters of which United States nationals described in subclause (I) have performed such work during the six months preceding the application of clause (i) with respect to a national of the state or vessel documented and enrolled with the state.*

* * * * * * *

(h) MISCELLANEOUS PROVISIONS.—

(1) * * *

* * * * * * *

*(4) SPECIAL RULES RESPECTING LONGSHORE WORK.—*

*(A) TREATMENT OF CERTAIN LONGSHORE WORK.—For purposes of this section, any person or other entity, including but not limited to ships agents, brokers, charterers, and procurers of labor, acting independently or on behalf of any other such person or entity, who brings into the United States (or coastal waters thereof) an individual who performs longshore work (as defined in subparagraph (D)), shall be considered to have hired such individual for employment in the United States within the meaning of subsection (a) as of the first date that the individual first performs such work.*

*(B) PAPERWORK REQUIREMENT FOR LONGSHORE WORK.—In applying the requirements of paragraph (3) of subsection (b) (relating to retention of verification forms) to employment described in subparagraph (A), the person or entity shall designate, in writing to the Attorney General, a person or entity located at a port in the United States in the vicinity of the location of the longshore work involved who agrees to be responsible for the retention and making available for inspection of such forms under such paragraph.*

*(C) NO AUTHORIZATION MERELY THROUGH CLASSIFICATION AS ALIEN CREWMEN.—The mere classification of an alien as a nonimmigrant under section 101(a)(15)(D) (without the document or documents described in subsection (b)(1)(E)(i) with respect to the alien) shall not be considered to authorize, for purposes of this section and section 274B, the performance of longshore work by that alien.*

*(D) LONGSHORE WORK DEFINED.—In this paragraph and subsection (b)(1), the term "longshore work" includes activities relating or incident to the loading or unloading of cargo, including the operation of cargo-related equipment, whether or not integral to the vessel, and the securing of the vessel, in the United States or the coastal waters thereof; except that, for purposes of subsection (b)(1)(E)(ii), such term includes such activities with respect to vessels in (or in the coastal waters of) the reciprocal foreign state.*

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